

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
OLLY NEAL, Judge

DIVISION I

CA06-56

SEPTEMBER 13, 2006

COUNTRY MART
BENCHMARK INSURANCE CO.

APPELLANTS AN APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[F410235]

v.

BRANDY J. REED

APPELLEE AFFIRMED

The appellants, Country Mart and Benchmark Insurance Company, appeal from the October 11, 2005, opinion of the Arkansas Workers' Compensation Commission (Commission) which affirmed in part, modified in part, and reversed in part an opinion of the administrative law judge (ALJ). More specifically, the Commission held that appellee, Brandy Reed, suffered a compensable injury and proved entitlement to temporary-total-disability benefits from August 20, 2004, through December 27, 2004, reasonable medical expenses, an eight percent permanent impairment, and attorney's fees. The appellants argues that no substantial evidence exists to support the Commission's findings. We affirm.

The appellee began her second term of employment with the appellant Country Mart on August 10, 2004, as a produce person. Appellee worked part-time for minium wage. Appellee was

a 2000 Paragould High graduate; she had no other form of education and/or training. Appellee had previously worked at McDonald's, performed factory laborer duties, worked with appellant Country Mart as a cashier, and worked as a debt collector.

On August 14, 2004, while lifting a box of bananas (10-15 lbs.), appellee sustained an injury to her back. Appellee stated that she was moving the boxes of bananas when she felt "something in [her] back." She testified that she began to cry and called her supervisor, Bob Wooten, over. Wooten sent appellee to the break room. Once appellee realized that she was not going to feel better, she asked to go home. Once she got home, appellee testified that all she could do was lay on the couch. The next day, appellee returned to work; she didn't remember doing any heavy lifting that day. Appellee said that she could not do her job after the injury. Appellee reported to work several more times after the August 14 accident. On these dates, appellee said that she worked hours for other employees and that everybody was telling her to go home because she was "hunched over."

Appellee did not seek medical attention until a couple of weeks after her injury. According to appellee, she was trying to go to the bathroom at home when she "just kind of crumbled to the floor." Thereafter, she crawled back to bed and called Dr. Ronald Hollis, her primary care physician. When she arrived at Dr. Hollis's office he was not there so she went to the emergency room. Dr. Hollis admitted appellee into the hospital, and she remained there for four or five days. A CT of appellee's lumbar spine was conducted on August 27, 2004, and a lumbar spine MRI was completed on August 30, 2004. Pain medication was administered to appellee while hospitalized.

Following appellee's hospitalization, she contacted workers' compensation personnel for Country Mart who made her an appointment to see Dr. Tuck. When appellee went to the appointment, she learned that workers' compensation had denied the appointment. Appellee was

still experiencing pain shooting down her legs and conferred this to Dr. Hollis. Dr. Hollis referred the appellee to Dr. Kenneth Eubanks.

Appellee first saw Dr. Eubanks on November 9, 2004. At this time, she gave Dr. Eubanks a history and answered questions concerning her injury. According to Dr. Eubanks, the “history was that she was at work at Country Mart and she described picking up a box of something. . . and while picking it up she was twisting or turning and she felt a pop or pain in her back.” Based upon what appellee told Dr. Eubanks and what he was able to see, appellee’s complaint “was classic for a left S1 radiculopathy due to a herniated disc at L5-S1.” Dr. Eubanks’s initial diagnosis was confirmed once he looked at the MRI. “The MRI scan showed exactly what I was sure that it would, which was a disc herniation on the left side at L5-S1 compressing her S1 nerve root.” Dr. Eubanks recommended surgery as the treatment for appellee’s condition. On November 15, 2004, Dr. Eubanks performed microdiscectomy of appellee’s left L5-S1 to remove the herniated disc.

Sometime following these events, appellee filed a claim seeking benefits from the appellants. Appellants controverted the claim, arguing that appellee was not entitled to workers’ compensation benefits. A hearing was held before the ALJ. During the hearing, appellee testified that, prior to August 14, 2004, she never had problems with her back. She also stated that she had not received any previous treatment for lumbar or cervical spine problems. According to appellee, since the surgery, she has not experienced any pain shooting down her leg. Six weeks following her surgery, appellee went to work at Professional Credit Management. She did not return to Country Mart because “Country Mart didn’t have a position for [her] so [she] had to find another job.” This job did not involve heavy lifting or twisting. Appellee testified that several changes had occurred in her life since the injury. According to appellee:

I am now a lot better physically. I do not feel like I can do anything I want, like I did before this accident. I have to watch what I do. I have to pretty much be careful in everything I do, especially having limits when lifting but, I'm scared to bend over and pick anything up, even if it's a hairbrush I'm scared I'm going to hurt, you know. And just my life has changed over it, tremendously. Me and my husband was hoping to have a baby before and now I hope that we don't because I can't get pregnant for a year. I know that now my life has changed. I have put my personal stuff on hold for so long that even when that time comes I might still have problems.

Dr. Kenneth Eubanks testified at this hearing under a subpoena. He stated that he first saw appellee on November 9, 2004. At this time, she gave him a history and answered questions about her injury. Appellee told Dr. Eubanks that she had hurt her back on August 14, 2004, at Country Mart, when she was lifting a box of bananas. Dr. Eubanks testified that appellee had a lot of guarding whenever she moved about. According to Eubanks, appellee "ha[d] no abnormal pain behavior whatsoever. She ha[d] neurologic signs of weakness and of numbness and a loss of ankle jerk all of which point to exactly the same S1 nerve root. So that is just a slam dunk." The MRI scan confirmed Dr. Eubanks's suspicion that there was a herniated disc on the left side at L5-S1 compressing appellee's S1 nerve root. Dr. Eubanks went further and stated:

This one was a real slam dunk and in terms of the type of injury that she had where you have a lifting and a twisting motion at the same time, that is absolutely the most classic thing that causes a disc herniation. The reason for that is that the fibers around the disc which normally hold the disc in are crisscrossed and it's sort of like Kevlar. They cross. That's actually three layers that cross at 90 degree angles. They did a nice spine study on some cadavers as well as some calves several, several years ago in which they placed some small strain meters in the annulus of these specimens and then they did various motions with them. . . . The absolute greatest was a rotation and especially if you added a rotation and flexion or extension to it then there was incredible strain on the annulus and the summary of that particular study, [which] is pretty much well accepted in the neurosurgical literature, is that the combination is the most common thing when a person is able to identify what caused the disc herniation [such] that they twisted and fell or twisted [and] lifted. I've seen hundreds and hundreds of disc herniations and that is the most common thing.

Dr. Eubanks concluded that the August 14, 2004, accident caused the problems appellee was

experiencing, and he recommended surgery. Dr. Eubanks performed this surgery on November 15, 2004. Just as was shown on the MRI, there was a large herniated disc compressing the S1 nerve root. The herniated disc was removed, and the root was decompressed. Dr. Eubanks informed appellee's attorney that he believe with "100% medical certainty" that the work accident caused the injury. During the hearing, Dr. Eubanks admitted that nothing was one hundred percent but that he was "99.999%" sure that the work accident caused appellee's injury for which she was treated. Dr. Eubanks stated that appellee asked him if her injury have come from something that may have happened previously, and he told her no. He said he "felt like she completely recovered from whatever that was and that was pretty minor. It was nothing like this was." He testified that the fact was that "when this event happened she knew immediately and she was in really dire straights [sic] from the beginning" and this led him to conclude that the August 14, 2004, accident caused the appellee's injury.

Appellee's supervisor, Bob Wooten, testified at the hearing for the appellants. According to Mr. Wooten, appellee never told him on August 14, 2004, that she hurt her back. He said she was crying and saying that she did not feel well. He first learned from Country Mart's store manager, Steve Morrison, that appellee claimed she was hurt on August 14. Mr. Wooten said he had a phone conversation with appellee wherein she said "she was down [o]n her back and that she thought she had hurt it at Anchor Packaging." Mr. Wooten stated that this call was the first time he had heard anything about appellee ever hurting her back; that appellee did not appear to have any problems lifting, as her job required, prior to August 14, 2004; that appellee returned to work after August 14; and that appellee had been a good worker.

Mr. Morrison testified at the hearing that he had a conversation with appellee when she was

at the emergency room. During this conversation, Morrison testified that appellee told him that she thought she had a ruptured disc in her back. His testimony was also that appellee stated that she received the injury at her previous employer, Anchor Packaging. According to Morrison, “[w]e were surprised to learn when she filed a claim alleging that she got hurt on August 14” while lifting a box of bananas at Country Mart.

On rebuttal, appellee maintained that her injury resulted from the August 14, 2004, accident at Country Mart; that she spoke to Mr. Morrison the day after she was admitted into the hospital; that she did not remember telling him she injured her back at Anchor; and that when she talked to Mr. Morrison she was on a morphine pump.

In addition to the foregoing testimony, the deposition of appellee’s primary care physician, Dr. Hollis, was admitted into evidence at the hearing. Dr. Hollis testified that he ran a family practice in Paragould and first treated appellee on August 1, 2002. Dr. Hollis, stated he had “never treated appellee for any back problems or muscle strains or degenerative problems prior to August 14, 2004.” Dr. Hollis first saw appellee concerning her August 14 injury on August 27, 2004, after she was admitted to the hospital. According to Dr. Hollis, appellee’s symptoms were consistent with the CT scan, which led him to conclude that the herniated disc was of recent origin. Dr. Hollis determined that the injury resulted from the August 14, 2004, accident appellee had told him about.

Upon hearing all the evidence presented, the ALJ found that appellee sustained a compensable injury and was entitled to temporary-total-disability benefits from August 20, 2004, to February 8, 2005; permanent physical impairment in the amount of eight percent to the body as a whole; loss earning capacity in the amount of five percent; reasonable hospital and medical expenses; and attorney’s fees. The appellants appealed the ALJ’s decision to the Full Commission.

The Commission affirmed the ALJ's findings that appellee sustained a compensable injury on August 14, 2004, that she was entitled to an eight percent permanent physical impairment rating, and that she was entitled to reasonable hospital and medical expenses. However, the Commission modified the temporary-total-disability benefit award and found that appellee's healing period ended on December 27, 2004. The Commission reversed the ALJ's wage-loss award. It is from the Commission's order that appellants now bring this appeal.

On appeal, appellants do not contend that appellee's injury is not established with medical evidence supported by objective findings nor do they contest the fact that the appellee has suffered a back injury. Instead, appellants argue that (1) there is no substantial evidence to support the Commission's findings that appellee suffered a compensable work-related injury and (2) there is no substantial evidence to support the Commission's findings that appellee is entitled to medical expenses, temporary-total-disability benefits, or a permanent impairment rating.

We review workers' compensation cases in the light most favorable to the Commission's findings and affirm the decision if it is supported by substantial evidence. *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Air Compressor Equip. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000). The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the Commission's conclusion, its decision must be affirmed. *Geo Specialty, supra*. It is the Commission's function to determine witness credibility and the weight to be afforded to any testimony; the Commission must weigh the medical evidence and, if such evidence is conflicting, its resolution is a question of fact for the Commission. *Searcy Indus. Laundry, Inc. v. Ferren*, 82

Ark. App. 69, 110 S.W.3d 306 (2003). The Commission has the authority to accept or reject medical opinions and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003).

In workers' compensation cases, the claimant has the burden of proving by a preponderance of the evidence that his/her claim is compensable. *Stephenson v. Tyson Foods, Inc.*, 70 Ark. App. 265, 19 S.W.3d 36 (2000). According to Ark. Code Ann. § 11-9-102 (4)(A)(i) (Repl. 2002), a compensable injury is:

an accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is accidental only if it is caused by a specific incident and is identifiable by time and place of occurrence.

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102 (4)(D)(Repl. 2002).

In this case, the Commission determined that appellee proved she sustained a compensable work-related injury on August 14, 2004. The Commission wrote:

In the present matter, we find that the claimant was a credible witness. The claimant testified that she sustained an accidental injury at work on August 14, 2004. Specifically, the claimant testified that on that date while lifting a box of bananas, she twisted and heard her back "pop," which resulted in an immediate onset of severe pain that radiated down her leg. The claimant testified that she attempted to continue working, but her pain became so severe she began to cry. According to the claimant she told her supervisor (Mr. Wooten) what had happened and he instructed to go to the break room. Although Mr. Wooten admits that he observed the claimant crying and instructed her to take a break, he denies that the claimant told him she had sustained a work-related injury at that time. The Full Commission finds that the claimant gave a plausible account of the incident and of her having promptly reported the incident to Mr. Wooten on August 14, 2004. Moreover, we find that the claimant's account of the incident was corroborated by the medicals and Dr. Eubanks's clinical impression of the claimant's back. While we realized that Mr. Wooten and Mr. Morrison testified that the claimant told them she hurt her back while working for Anchor Packaging, the claimant denies having told [them] that. She also denies having injured her back at Anchor or during some other incident. With this in mind, and considering that Mr.

Wooten essentially testified that he had not observed the claimant having any problems with her back prior to August 14, 2004, and there being no medical evidence in the record demonstrating that she sought medical treatment for her back prior to that date, the Full Commission finds it is more probable than not that the claimant did not suffer an injury to her back prior to August 14, 2004. In addition to this, both Drs. Hollis and Eubanks have opined that there is a causal connection between the claimant's back problems and the August 14, 2004 work-related incident. We attach significant weight to these two expert opinions since their clinical impression[s] of the claimant's back injury is consistent with her report of the incident, and there being no medical opinions to the contrary or any other probative evidence before the Commission suggesting that the claimant's back injury resulted from some other source. The Full Commission also finds that the [ALJ] correctly relied on the "objective findings" found in the August 30, 2004, MRI, namely "a herniated disc on the left at L5-S1, which was compressing her S1 nerve root." According to Dr. Eubanks, this type of injury occurring wherein you have a twisting and turning motion at the same time, is the most classic thing that causes a disc herniation. The claimant initially received conservative treatment for this condition under the care of Dr. Hollis, but her pain and related symptoms continued to worsen. Ultimately, on November 15, 2004, Dr. Eubanks performed surgery on the claimant's back, which significantly improved her condition.

Therefore, based on the claimant's credible testimony and the expert opinions of Drs. Hollis and Eubanks, the Full Commission finds that the claimant has proven by a preponderance of the evidence that her back condition is causally related to her employment. We therefore affirm the [ALJ's] finding that the claimant sustained an injury arising out of and in the course of her employment with the respondent on August 14, 2004.

Appellant's argument on this point merely challenges the credibility of appellee and Drs. Hollis and Eubanks, and as previously stated, we defer to the Commission's determinations of credibility. *Searcy Indus. Laundry, Inc. v. Ferren, supra*. Therefore, as substantial evidence supports the Commission's finding that appellee sustained a compensable work-related injury on August 14, 2004, we affirm.

Appellant argues second that, because appellee's injury was not compensable, she is not entitled to temporary total disability, medical, or permanent impairment. Arkansas Code Annotated section 11-9-102(4)(F)(i) (Repl. 2002) states that an employee is entitled to medical and temporary disability only when it is determined that she has suffered a compensable injury. Furthermore, Ark.

Code Ann. § 11-9-102(4)(F)(ii)(a) (Repl. 2002), states that permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. The Commission determined that appellee suffered a compensable injury, a finding which we have affirmed, and that appellee's injury was the major cause of her anatomical impairment. Therefore, appellee was entitled to receive these workers' compensation benefits.

Affirmed.

HART and VAUGHT, JJ., agree.